

IN THE SUPREME COURT OF THE STATE OF NEVADA

BAILEY WILLOUGHBY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41901

FILED

JUL 01 2004

ORDER DISMISSING APPEAL

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant Bailey Willoughby's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michael L. Douglas, Judge.

On June 20, 1979, the district court convicted Willoughby, pursuant to a guilty plea, of one count of burglary and one count of attempted sexual assault with the use of a deadly weapon. The district court sentenced Willoughby to serve a term of ten years in the Nevada State Prison for the burglary conviction; a term of twenty years for the attempted sexual assault conviction; and a term of twenty years for the deadly weapon enhancement. Willoughby's sentence for burglary was imposed to run concurrently with his sentence for attempted sexual assault with the use of a deadly weapon.

It appears that on July 29, 1998, Willoughby served a copy of a post-conviction petition for a writ of habeas corpus on the State. In the

petition, Willoughby challenged the Nevada Department of Corrections' computation of time he has served on his sentence. On August 18, 1998, the State filed a motion to dismiss Willoughby's petition. On September 21, 1998, the district court denied Willoughby's petition. This appeal followed.

This court's review of the record on appeal reveals a jurisdictional defect. Specifically, Willoughby never filed a copy of his petition in the district court.¹ The district court denied Willoughby's petition despite the fact that the petition had never been filed in that court.² Because the petition was not filed in the district court, the district court failed to acquire jurisdiction over the petition. Thus, the district court's September 21, 1998 order denying the petition is void, and we direct the district court to vacate its order. This court lacks jurisdiction to


¹On May 11, 2004, this court entered an order directing transmission of a supplemental record on appeal. Because Willoughby's petition for a writ of habeas corpus was missing from the record on appeal, this court directed the clerk of the district court to transmit a copy of the petition filed in the district court. On June 7, 2004, the clerk of the district court informed this court that a filed copy of Willoughby's petition could not be located.

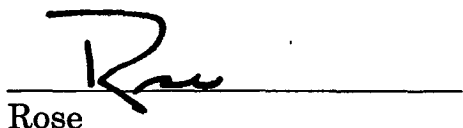
²It appears that the district court relied on the State to prepare the written order denying the motion. It is unclear how the district court was able to resolve the claims raised in the motion when the claims were never made a part of the record.


consider an appeal from an order denying a petition that was never filed in the district court. Such an order is not a final, appealable determination.

Accordingly, we

ORDER this appeal DISMISSED.³

 _____, C.J.
Shearing

 _____, J.
Rose

 _____, J.
Maupin

cc: Eighth Judicial District Court Dept. 11, District Judge
Bailey Willoughby
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

³We have reviewed all documents that Willoughby has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted.